

17.02.2023

Court No.02
Item No.06

Ab

CRR 1001 of 2015

**Monirul Sekh
Vs.
The State of West Bengal.**

This criminal revision has been preferred by the applicant under Sections 397 and 482 of the Code of Criminal Procedure against an order dated 17th March 2015 passed by the learned Additional Chief Judicial Magistrate, Basirhat, in connection with G.R. Case No. 3637 of 2013 whereby the applications filed under Sections 91 and 207 of the Code of Criminal Procedure have been rejected.

No one is present on behalf of either of the parties.

The instant matter relates to administration of criminal justice. As held by the Hon'ble Supreme Court in case of **Madan Lal Kapoor vs. Rajiv Thapar and others**, reported in **(2007) 7 SCC 623** that a criminal matter cannot be dismissed for default and it must be decided on merits.

So, the instant matter is taken up for disposal on merit.

The facts leading to filing of this criminal revision is that the petitioner filed two applications before the learned trial court under Sections 91 and 207 of the Code of Criminal Procedure with a prayer for production of the CC Camera footage of the Hasnabad Police Station for the period 12.09.2013 to 16.09.2013 as well as providing him the relevant documents as per the relevant provisions of law. After giving opportunity of being heard, the learned trial court rejected both the applications filed by the accused/petitioner.

Being aggrieved and dissatisfied with the said impugned order passed by the learned trial court, the accused/petitioner preferred this criminal revisional application before this Court.

It is profitable to quote the observations of the Hon'ble Apex

Court in case of **Kamlesh Kumar and Ors. vs. State of Jharkhand and Ors.**, reported in **2009 Cri. L.J. 2247**, wherein the Hon'ble Apex Court observed at paragraph 46 inter alia that:

“While the revisional power of a superior court actually enables it to correct a grave error, the existence of that power does not confer any corresponding right on a litigant. This is the reason why, in a given case, a superior court may decline to exercise its power of revision, if the facts and circumstances of the case do not warrant the exercise of its discretion. This is also the reason why it is felicitously stated that a revision is not a right but only a “procedural facility” available to a party. If the matter is looked at in this light, the transfer of a case from a Magistrate to a Special Judge does not take away this procedural facility available to the petitioners. It only changes the forum and as already held above, the petitioners have no right to choose the forum in which to file an appeal or move a petition for revising an interlocutory order.”

Let us see whether the order of rejection of the applications under Sections 91 and 207 of the Cr.P.C. is an interlocutory order and whether revision lies against that interlocutory order or not.

The provisions under Section 397 gives a power to this Court for calling for the records for the purpose of satisfying itself as to the correctness, legality or propriety for any finding, sentence or order recorded or passed or to satisfy itself as to regularity of any proceedings of such inferior court. The duty is cast on this Court before passing an order in a revision proceeding to satisfy itself about the correctness of the order passed. That leaves no room for the Court to dismiss the criminal revision in default. If the party, who moved the Court in revision, does not appear the Court has no option but to examine the record and satisfy himself whether revision is to be allowed or dismissed.

An intermediate order is one, which is made between the commencement of an action and the entry of the judgment. The natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order, which does not terminate the proceedings or finally decides the right of the parties, is only an

interlocutory order. In other words, in ordinary sense of the term interlocutory order is one, which decides a particular aspect or a particular issue or particular matter in a proceeding or trial, but it does not however conclude the trial at all.

According to Section 397(2) Cr.P.C., the revision against an interlocutory order is not maintainable. It is well settled that in deciding whether an order under challenge is interlocutory or not as far as Section 397(2) Cr.P.C. is concerned, the sole test is whether such order was passed during the interim stage. If the order under challenge culminates the criminal proceeding as well or finally decides the rights and liabilities of the parties, then the order passes is not interlocutory in spite of the fact that it was passed during any interlocutory stage. The test is whether by upholding the objections raised by the party it would result in culminating the proceeding if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) Cr.P.C.

It is profitable to quote the observations of the Hon'ble Apex Court in case of **Sethuraman vs. Rajamanickam**, reported in **2009 Cri.L.J. 2247**. In the above preferred case of **Sethuraman (Supra)**, the Hon'ble Apex Court observed inter alia that:

“Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory in nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set

aside. It is accordingly set aside. The appeals are allowed.”

The Hon’ble Apex Court in the above preferred case held that revision against an order rejecting application under Section 91 Cr.P.C. was the order of interlocutory in nature in which case under Section 397(2) Cr.P.C. revision petition was clearly not maintainable.

So, it is clear that in this case learned trial court has passed an order on an application under Section 91 Cr.P.C. and the revision would not lie against that interlocutory order passed by the learned trial court.

An important thing is to be noted that power is vested with the Magistrate to direct supply of documents under Section 207 Cr.P.C., but as per the provisions of Section 207 Cr.P.C., in certain cases the Magistrate may restrict the right of the accused and in **Sethuraman (Supra)**, the Hon’ble Supreme Court considered the distinction between the revisible and non-revisible order and took into consideration the fact whether the order in any manner decided anything finally.

In the instant case as well, the order under Section 207 Cr.P.C, is not decided anything finally and, thus, it may termed as interlocutory order for the purpose of bringing the jurisdiction of the High Court under Section 397 Cr.P.C.

I am of the considered opinion that Section 207 Cr.P.C. though of paramount importance neither terminates the proceedings nor concludes the trial. It mere decides a particular aspect of a particular issue or a particular matter in a proceeding.

On the issue pertaining to supply of documents nothing less nothing more is an order of exercising powers under Section 207 Cr.P.C. is nothing more an intermediate order, which clearly falls within the meaning of interlocutory.

In view of the above discussion, I find that the instant revisional application is liable to be rejected as not maintainable.

Thus, the criminal revisional application is dismissed as not

maintainable.

Interim order, if any, stands vacated.

Let a copy of this order be sent to the learned Trial Court for information and necessary compliance.

(Prasenjit Biswas, J.)